

**LFC Requester:****Julia Downs****AGENCY BILL ANALYSIS  
2017 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)***and***[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original**      X   **Amendment**          **Correction**           **Substitute**          **Date**   1/12/17  **Bill No:**   SB 61  **Sponsor:**   Sen. Peter Wirth & Jim Dines  **Agency Code:**   305 – Office of Attorney General  **Short**      Electronic Communication  **Person Writing**      Joshua A. Spencer  **Title:**      Privacy Act  **Phone:**   5057173530   **Email**   jspencer@nmag.gov  **SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: This Bill is designed to broaden the privacy expectations of New Mexicans in their electronic device information.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES –**

This Bill forbids a governmental actor from compelling or incentivizing the production of electronic device information from a person or service provider other than the device’s “*authorized possessor*.” Further, the government is not allowed to access the electronic device information by means of a “physical interaction or electronic communications with the electronic device.” An “*authorized possessor*” is defined as a “natural person who owns and possesses and electronic device or a natural person who, with the owner’s consent, possesses the electronic device.” This dynamic raises an issue for electronic device owned by one party but allows a third party to possess the device. For instance, a parent who buys a phone for their child cannot give permission to a governmental actor to access the phone. Also, this owner/authorized possessor dynamic comes into play when an employer provides an electronic device to their employee, the employer has no authority to access or release electronic device information for a device they own.

In light of recent New Mexico Supreme Court decisions, the act is designed to increase each individual’s expectation of privacy in our electronic device information. *See State v. Tufts*, 2016-NMSC-020; *see also State v. Angelo M.*, 2014 WL 1315005, *State v. Rigoberto Rodriguez*, 2016 WL 4579254. The Act is balanced with allowances for civil subpoena, search warrants and emergent circumstances.

**PERFORMANCE IMPLICATIONS**

The Bill would require additional obligations by the Officer of the Attorney General, but provides no additional appropriation for staff.

## **ADMINISTRATIVE IMPLICATIONS**

The Bill does impact the administrative functions of the AG's Office. In the case where a target has not been identified, the governmental actor who executes the warrant or obtains electronic information in an emergency must submit a Report within 3 days to the AG's Office. The Report must contain a notice that information is being compelled or requested, the nature of the investigation and copy of the Warrant. In turn, within 90 days of receipt of each Report, the Attorney General must publish the Report on his website. The Attorney General is responsible for redacting names and all other PII from the Reports. Beginning in 2019, the Act requires the AG to tabulate the individual reports from each governmental actor and publish a summary of the individual reports.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo.

## **AMENDMENTS**

In light of the owner/possessor dynamic, the bill could be amended to allow parents of children under the age of 18 to have and grant access to electronic device information and allow employers to have and grant access to electronic device information for devices they own and pay for the device's service.